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701981—46 —1

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 100

SILAS MASON COMPANY, INC., WALSH CONSTRUCTION COMPANY, ATKINSON-KIER COMPANY, PETITIONERS

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 86–98) is reported at 62 F. Supp. 432.

JURISDICTION

The judgment of the Court of Claims was entered on October 1, 1945 (R. 98–99). A motion for new trial was overruled on February 4, 1946 (R. 99). The petition for a writ of certiorari was filed on May 4, 1946. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTIONS PRESENTED

1. Whether the court below erred in denying recovery to petitioners on claims which, under Article 15 of a standard form Government contract, had been decided adversely to petitioners by the contracting officer, where petitioners had taken an appeal from that decision but, before the appeal was passed upon by the head of the department, had abandoned it.

2. Whether there was such "clear evidence" that the appeal procedure established by Article 15 was so "inadequate or unavailable" as to justify petitioners' failure to exhaust that procedure.

CONTRACT PROVISIONS INVOLVED

Article 15 of the contract involved provides:

> *Disputes.*—All labor issues arising under this contract which cannot be satisfactorily adjusted by the contracting officer shall be submitted to the Board of Labor Review. Except as otherwise specifically provided in this contract, all other disputes concerning questions arising under this contract shall be decided by the contracting officer or his duly authorized representative, subject to written appeal by the contractor within 30 days to the head of the department concerned or his duly authorized representative, whose decision shall be final and conclusive upon the parties thereto as to such questions. In the meantime the contractor shall diligently proceed with the work as directed.

Other pertinent provisions of the contract and specifications involved are set forth in Appendix, pp. 21–23.

STATEMENT

On July 16, 1934, petitioners entered into a contract with the United States[1] to furnish labor and materials and perform all work required for construction of the Grand Coulee Dam and Power Plant (first development) across the Columbia River in the State of Washington (Fdgs. 2, 4; R. 72). The consideration, which for the most part was dependent upon final quantities of work performed at unit prices in accordance with Specifications No. 570, was estimated at over $29,000,000 (Fdgs. 2, 3; R. 72, 86–87). Petitioners began work under the contract on October 4, 1934, and their work was completed and accepted by the Government on March 21, 1938 (Fdg. 5; R. 73).

Petitioners' contract called for the construction of a "low dam, which was the first development of the ultimately projected high dam" (Fdgs. 11, 9; R. 76, 74). On June 5, 1935, a change order, designated as Order for Changes No. 1, was sent to petitioners, by which the construction of the low dam was abandoned and petitioners were directed to construct the lower part of the high dam (Fdg. 11; R. 76). Petitioners

[1] The Government's contracting officer was R. F. Walter, Chief Engineer, Bureau of Reclamation (Fdg. 2; R. 72).

immediately proceeded to work in compliance with the change order (Fdg. 11; R. 76). On August 23, 1935, petitioners submitted their claim for adjustment of compensation arising out of the change order (Fdg. 12; R. 77). Negotiations between representatives of petitioners and of the Government for an adjustment of compensation were carried on until December 1935, in which month the contracting officer issued an Adjustment of Compensation which was accepted and signed by each of the petitioners (Fdg. 12; R. 77). The change effected by Change Order No. 1 ulfimately increased the money consideration paid petitioners to approximately $40,000,000 (Fdg. 11; R. 76).

During the progress of the work, petitioners' representatives often discussed matters of controversy with or complained orally to the Government's inspectors and the construction engineer (Fdg. 16; R. 79–80). Such discussions or oral complaints usually resulted in a meeting of the construction engineer with representatives of petitioners "to thresh matters out and to settle the controversy. Sometimes an agreement was reached and at other times not. On a few occasions when no agreement was reached [petitioners] notified the construction engineer that claims for damages would be made. These complaints and discussions were more or less informal, without attempting to comply with the limitations

prescribed in paragraph 14 of Specifications No. 570 [Fdg. 15; R. 79; *infra,* pp. 22–23]; and, with few exceptions, no appeals were taken within the 30-day period provided in Article 15 [Fdg. 14; R. 79; *supra,* p. 2], to the head of the department" (Fdg. 16; R. 80).

On November 22, 1937, petitioners submitted to the Secretary of the Interior, who was the head of the department which had made the contract, a number of claims for additional compensation (Fdg. 17; R. 80, 135–140). These claims were referred to the contracting officer, to whom, under Article 15 of the contract (Fdg. 14; R. 79; *supra,* p. 2), the head of the department thought they should have been first presented (Fdg. 17; R. 80, 140–141). A total of 28 such claims for additional compensation were presented to the contracting officer up to February 14, 1938 (Fdg. 17; R. 80). Between March 4 and May 3, 1938, petitioners submitted to the contracting officer statements of damage on each of the claims (Fdg. 17; R. 80).

Beginning in July 1938, there ensued an exchange of letters and telegrams between counsel for petitioners and the Secretary of the Interior "which contained the respective differing views of the parties as to the proper approach and speed for the consideration of the claims then pending" (Fdg. 20; R. 81, 147–169). Counsel for petitioners, in his letters and telegrams, complained

of the amount of time being taken by the contracting officer in arriving at his decision on petitioners' claims and complained further that the contracting officer was proceeding "*ex parte*" and that it was "inferable from the action and attitude of the contracting officer that whatever finding of facts he may ultimately make will be in the nature of an attempted vindication of the position he has consistently taken in the correspondence between himself and the contractor" (R. 149). Counsel for petitioners further charged the contracting officer "with dereliction of duty and with arbitrary action" (R. 159), and called upon the Secretary of the Interior to "appoint a representative to conduct a hearing and advise you as to the propriety of our claims" (Fdg. 20; R. 81, 153). The Secretary of the Interior advised counsel for petitioners "that every effort is being made to complete the findings of fact in connection with these claims. The claims are unusual in their scope and in the amount involved and of necessity must be given careful consideration. The matter will be expedited as much as possible" (R. 153). The Secretary defended the careful scrutiny being given to petitioners' claims, suggested that petitioners' counsel "permit me to run my department in my own way," and further suggested "that the proper course for you to pursue is to let this claim take its course" (R. 159–160).

On December 5, 1938, the contracting officer made his findings of fact[2] which were, on the following day, sent to counsel for petitioners (Fdg. 18; R. 80, 169). Each of petitioners' 28 claims, except Claim No. 13, was denied by the contracting officer (Fdg. 18; R. 80–81). With respect to Claim No. 13, the contracting officer found petitioners entitled to remission of $1,099.80 which had been deducted from compensation otherwise due them, but denied the balance of the claim (Fdg. 18; R. 81, 97).

On January 4, 1939, counsel for petitioners wrote to the Secretary of the Interior that they were appealing from the findings of the contracting officer "without recognition of any supposed requirement therefor" (Fdg. 21; R. 81–82, 170). On January 19, 1939, the Secretary inquired of counsel for petitioners as to whether they desired "to submit additional evidence or argument upon the claims" (Fdg. 22; R. 82, 170). On January 26, 1939, petitioners' counsel "requested a conference with the Secretary of the Interior with reference to the procedure to be followed on the appeal" (Fdg. 23; R. 82, 171). This request was referred by the Secretary to Mr. Margold, Solicitor of the Department of the Interior, "with instructions to consider the appeal and the evidence

[2] The findings, petitioners' Exhibit J in the court below (Fdg. 18; R. 80, 98), comprised over 600 pages of mimeographed material.

submitted in support thereof, and make a report thereon to the Secretary for his consideration in making his final decision in the matter" (Fdg. 23; R. 82–83, 192). On February 6, 1939, petitioners' counsel "demanded" of Mr. Margold "the right to present oral evidence in support of the claims of his clients, as well as the right to cross-examine the contracting officer and any of his staff who had knowledge of the claims or who had advised with the contracting officer in connection therewith" (Fdg. 23; R. 83, 110–111, 171–174). Petitioners' counsel "stated at that time that it would take at least 6 weeks to complete the testimony which [they] intended to offer on their behalf" (Fdg. 23; R. 83, 113). By letter of February 11, 1939, Solicitor Margold advised petitioners that they "were accorded the privilege, without qualification, of presenting oral testimony in support of their claims, together with the privilege of cross-examining such witnesses as [the Government] might produce" (Fdg. 23; R. 83, 114, 174–175). The Solicitor's letter of February 11 also advised petitioners that unexpected circumstances had "arisen which require me immediately to leave Washington for California and may delay my return for a few weeks" (Fdg. 23; R. 83, 115, 174). On February 16, 1939, counsel for petitioners replied to the February 11 letter, stating that the Solicitor's decision as to the type of hearing petitioners would be accorded by the

Solicitor "is entirely agreeable to us" (R. 175, 117).

Further correspondence ensued between counsel for petitioners, on the one hand, and Mr. Margold, who was in California, and the Secretary of the Interior, on the other (R. 116–117, 176–181). On February 24, 1939, Mr. Margold informed counsel for petitioners that he would be willing to conduct the hearing on petitioners' claims "in the afternoons, * * * daily except Saturdays, Sundays, and holidays" (R. 116, 177–178). For the purpose of making arrangements, Mr. Margold referred counsel for petitioners to the Acting Solicitor and agreed to "abide by any decision he may make on my behalf with respect to any matter that may arise on which you would feel it necessary to consult me personally, were I in Washington" (R. 178, 118). By letter of March 9, 1939, the Acting Secretary of the Interior repeated to counsel for petitioners that petitioners would be "granted 'a full and complete hearing of the merits of this controversy'" and would "'be at liberty fully to present all the oral and written testimony you deem pertinent to your case and to cross-examine any witness or witnesses that may be offered on behalf of the Government'" (R. 181). The Acting Secretary further advised counsel for petitioners that

> there now exists no reason why a date may not be set for the inauguration of the hear-

> ing. Accordingly, in the near future you will be notified by the Solicitor as to a date which is agreeable to him and advised as to the procedure which is deemed appropriate. Your desires with regard to any alteration in the established date, as well as any details concerning the procedure to be followed, will, of course, be given full consideration. (R. 181.)

Solicitor Margold did not return to Washington, D. C., until May 11, 1939 (R. 95, 118). On May 1, however, petitioners brought this suit in the Court of Claims (Fdgs. 24, 25; R. 1, 84–85) and, by letter of that date, advised the Secretary of the Interior that they had done so (Fdg. 24; R. 84, 181). On May 24, 1939, the Secretary wrote to counsel for petitioners (Fdg. 25; R. 84–85, 182–183, 193), referring to petitioners' appeal to the Secretary from the contracting officer's findings (R. 182), reciting the negotiations that had occurred between counsel for petitioners, on the one hand, and the Secretary and the Solicitor, on the other, with reference to the procedure to be followed in connection with such appeal (Fdg. 25; R. 84, 182–183), and concluding:

> Inasmuch as you have commenced an action in the Court of Claims, involving the same items as those embodied in your claim before the Department, before I have had sufficient opportunity either to arrange for such a hearing as you requested or to review the findings of the contracting officer,

> and in view of the conditions upon which your so-called appeal was presented, it is assumed that you have elected to forego whatever rights you may have by way of appeal to me from the contracting officer's decision under Article 15 of the contract, and that no further action by me will be necessary in the matter (Fdg. 25; R. 84–85, 183).

This letter was not answered (Fdg. 25; R. 85, 193).

The court found:[3]

> It has not been proved that the conduct of the contracting officer was arbitrary or capricious or lacking in good faith. * * *

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[3] The original petition in the court below was filed by petitioners on May 1, 1939 (Fdgs. 24, 25; R. 1, 84–85). On January 8, 1940, the Government's demurrer was sustained and the petition dismissed (R. 1, 10) on the ground that petitioners "did not exhaust their remedies under the contract when a decision was rendered against them" (R. 10). On February 14, 1940, petitioners, pursuant to leave granted, filed an amended petition (R. 10–70), the petition upon which this case was heard in the court below. Petitioners alleged, *inter alia*, the invalidity of Article 15 of the contract (Fdg. 14; R. 79; *supra*, p. 2) and of paragraph 14 of Specifications No. 570 (Fdg. 15; R. 79; *infra*, pp. 22–23); the arbitrary, capricious, and erroneous action of the contracting officer; the arbitrariness and hostility of the head of the department; and the failure of the head of the department to decide the appeals (R. 15–16); and sought judgment in the amount of $5,283,526.28. The Government filed a demurrer to the amended petition also (R. 70). On November 12, 1940, the court below, "desiring to be more fully informed as to the facts in the case," overruled the demurrer "without prejudice to any legal questions involved" (R. 70–71). The Government thereupon filed a general traverse (R. 71).

> The Secretary of the Interior, who was the head of the department mentioned in Article 15 of the contract, did not refuse or fail to entertain an appeal by the [petitioners] from the decisions of the contracting officer. The postponement of the beginning of hearings on the appeal which occurred in the early months of 1939 was not, in the circumstances, unreasonable or inconsiderate of [petitioners'] interests. (Fdg. 26; R. 85.)

The court held that on the basis of the evidence it "could not possibly make * * * a finding" that the contracting officer had been derelict in his duty (R. 92), that under Article 15 of the contract "the Government had a right" to have petitioners bring their "evidence to the attention of responsible officials of the Department" "to give it an opportunity to avoid the delay and expense of litigation" (R. 97), and, therefore, that petitioners "were required to submit all the disputes upon which this suit is based, to the stipulated administrative procedure" (R. 97). Judgment was entered for petitioners in the amount of $126,219.80 (R. 86, 98–99).[4]

[4] The judgment comprises two items: (1) $1,099.80 which the contracting officer had allowed petitioners as part of their Claim No. 13 (Fdgs. 18, 28; R. 81, 85, 97; *supra*, p. 7); and (2) $125,120 which the contracting officer had deducted from compensation otherwise due petitioners with the expectation that the Government would spend the money to repair certain drainage facilities which the contracting officer claimed had been improperly installed by petitioners (Fdg. 29; R.

ARGUMENT

The decision below was clearly correct. Article 15 of the contract (Fdg. 14; R. 79; *supra*, p. 2) directed that all "disputes [except "labor issues"] concerning questions arising under this contract shall be decided by the contracting officer or his duly authorized representative, subject to written appeal by the contractor within 30 days to the head of the department concerned or his duly authorized representative, whose decision shall be final and conclusive upon the parties thereto as to such questions." It is now well settled that this provision in Government construction contracts provides "the only avenue for relief" available for the settlement of disputes arising thereunder (*United States* v. *Callahan Walker Co.*, 317 U. S. 56, 61; *United States* v. *Blair*, 321 U. S. 730, 735), and that a contractor

85–86, 98). With respect to item (1), the court below held that under Article 15 the decision of the contracting officer was final (R. 97). With respect to item (2), the court below found that "The need for the repair did not develop, and it is now known, though it was not known when the contracting officer made his decision, that the repair will never be made" (R. 98). The court accordingly held that petitioners "did not lose their right in this claim by their failure to appeal from this decision, because the abandonment of the Government's intention to spend the money to repair the drainage facilities, which abandonment gave the [petitioners] a right to the money regardless of the merits of the controversy in other respects, did not occur until after the period for appeal had expired" (R. 98). Neither item is presently in controversy.

who, having accepted and agreed to Article 15, chooses not to pursue and exhaust its procedure to obtain relief, may not thereafter sue to recover damages in the Court of Claims. *United States* v. *Joseph A. Holpuch Co.*, Nos. 696 and 697, October Term, 1945, decided May 20, 1946. We believe that the *Callahan Walker, Blair,* and *Holpuch* cases are dispositive of the instant case.

1. Petitioners, while not conceding their obligation to have pursued the procedure of Article 15 prior to bringing suit in the Court of Claims, contend that in any event they were justified in abandoning their appeal. They rest their justification on the alleged bias and prejudice of the Secretary of the Interior (Pet. 14, 17–18, 20) and, apparently, on the amount of time which elapsed after the filing of their appeal without actual hearings having been begun thereon (Pet. 12, 14, 23–24). Neither ground, however, finds support in the evidence. And, as this Court has held, "in the absence of some clear evidence that the appeal procedure [provided by Article 15] is inadequate or unavailable, that procedure must be pursued *and exhausted* before a contractor can be heard to complain in a court." *United States* v. *Joseph A. Holpuch Co.*, Nos. 696 and 697, October Term, 1945, decided May 20, 1946, slip opinion, p. 4. [Italics supplied.]

Petitioners point out that the court below "avoided making any finding as to the bad faith on the part of Secretary Ickes" (Pet. 18). Peti-

tioners appear to found their charge of bad faith on the part of the Secretary upon an exchange of somewhat acrimonious letters and telegrams which took place between the Secretary and petitioner's counsel. This exchange, however, occurred while petitioners' claims were pending before the contracting officer and the entire burden of petitioners' complaint at that time was that the contracting officer was biased and that only the Secretary or his "representative" could afford petitioners appropriate redress (Fdg. 20; R. 81, 149–153, 156–159, 163, 166). It was after the exchange had taken place that petitioners appealed to the Secretary from the findings of the contracting officer (Fdgs. 20, 21; R. 81–82, 96, 170), and also after that exchange that counsel for petitioners advised both the Secretary and the Solicitor of the Department of the Interior that the procedure determined upon by the Solicitor with respect to the handling of the appeal was "entirely agreeable" to petitioners (R. 96, 175). As pointed out by the court below, "Counsel did not then think that the [petitioners] could not have a fair hearing on the appeal and, as we have concluded, nothing occurred thereafter which was a reason for changing that opinion" (R. 96).

Nor is there merit to petitioners' claim that the amount of time which elapsed after the filing of their appeal, without actual hearings having been begun thereon, warranted its abandonment.

Petitioners filed their appeal on January 4, 1939 (Fdg. 21; R. 81–82, 170). They filed their suit in the court below on May 1, 1939 (Fdgs. 24, 25; R. 1, 84–85, 96, 181), less than four months thereafter.[5]

Within that four-month period, counsel for petitioners conferred with the Solicitor of the Department of the Interior (Fdg. 23; R. 83, 109–112, 172) and engaged in an exchange of correspondence with the Solicitor and with the Secretary of the Interior (Fdgs. 22, 23; R. 82–83, 113–117, 170–181). As a result of such communications, a procedure for handling petitioners' appeal was decided upon which counsel for petitioners characterized as "entirely agreeable" (R. 96, 175) and a schedule for conducting hearings on the appeal was suggested by the Solicitor, to which counsel for petitioners appears to have taken no exception (R. 116, 178). On March 9, 1939, the Acting Secretary of the Interior advised counsel for petitioners that "there now exists no reason why a date may not be set for the inau-

[5] Compare the assertion by petitioners in their petition (p. 12) that they brought the instant suit "over 17 months after the submission of the original 16 claims to the Secretary." Petitioners' computation of 17 months obviously dates from November 22, 1937, when they first submitted to the Secretary a number of claims which, under Article 15 of the contract, should have been first submitted to the contracting officer and which, accordingly, were referred by the Secretary to the contracting officer at that time (Fdg. 17; R. 80, 135–141).

guration of the hearing" (Fdg. 23; R. 83, 181). The setting of the date awaited only the Solicitor's return to Washington from California where he was detained on official business (Fdg. 23; R. 83, 115). Having advised counsel for petitioners by letter of February 11, 1939, that he was required to leave immediately for California and would not return "for a few weeks" (Fdg. 23; R. 83, 96, 115, 174),[6] the Solicitor did not return to Washington until May 11, 1939 (R. 95, 118), ten days after petitioners filed their suit in the court below (Fdgs. 24, 25; R. 1, 84–85, 96, 181). But, as stated by the court below (R. 96).

> For a "few" weeks to turn out to be eleven, the time between February 11 and May 1, when counsel filed this suit, is not so unusual in the experience of lawyers that counsel had any reason to suppose that the delay indicated a repudiation by the Solicitor of his agreement to conduct a hearing, and to proceed upon that supposition without any inquiry as to what the facts were.

2. Nor does the bad faith which petitioners charge to the contracting officer justify their failure to exhaust the appeal provisions of Article 15. For even assuming the bad faith, arbitrariness, or dereliction of duty of the contracting offi-

[6] Later, counsel for petitioners were advised that the Solicitor would "be absent from Washington for some six weeks" (R. 176).

cer, an assumption the court below found not supported by the evidence (Fdg. 26; R. 85, 90–92), the procedure of Article 15 "provided a complete and reasonable means of correcting the abuses." *United States* v. *Blair,* 321 U. S. 730, 735. As this Court stated in that case (*ibid.*):

> Arbitrary rulings and actions of subordinate officers are often adjusted most easily and satisfactory by their superiors. Furthermore, Article 15 provided the Government with an opportunity to mitigate or avoid damages by correcting errors or excesses of its subordinate officers. Having accepted and agreed to these provisions, respondent was not free to disregard them without due cause * * *.

See also *United States* v. *Joseph A. Holpuch Co.,* Nos. 696 and 697, October Term, 1945, decided May 20, 1946.

3. Petitioners question (Pet. 2) the applicability of Article 15 to questions of law arising under the contract. Unlike the Article 15 contained in some Government construction contracts which is limited to questions of fact arising thereunder (*Cf. United States* v. *Callahan Walker Co.,* 317 U. S. 56) the Article 15 here involved (Fdg. 14; R. 79; *supra,* p. 2) is not so limited. *Cf. United States* v. *McShain,* 308 U. S. 512, 520–521; *United States* v. *Blair,* 321 U. S. 730; *United States* v. *Beuttas,* 324 U. S. 768; *United States* v. *Joseph A. Holpuch Co.,* Nos. 696 and 697, Oc-

tober Term, 1945, decided May 20, 1946. This Court, without having explicitly drawn any distinction between the two types of Article 15 (see *United States* v. *Beuttas,* 324 U. S. 768, 772), has upheld the finality of administrative determinations made thereunder. And this Court did hold in the *Holpuch* case, *supra,* that "Article 15 is controlling as to *all* disputes 'concerning questions arising under this contract' *unless otherwise specified in the contract*" (p. 4, slip opinion; italics supplied). Moreover, whatever may be the finality of Article 15 with respect to pure questions of law and whatever may be the validity of petitioners' contention that issues between them and the Government were issues of law as distinguished from issues of fact, it is clear that Article 15 validly requires the exhaustion of the administrative remedies made available therein. If this were not so, the Government would be denied the opportunity to correct the improper action of subordinate officials. *United States* v. *Joseph A. Holpuch Co.,* Nos. 696 and 697, October Term, 1945, decided May 20, 1946; *United States* v. *Blair,* 321 U. S. 730; *United States* v. *Callahan Walker Co.,* 317 U. S. 56. Only if petitioners had exhausted rather than abandoned the appeals procedure provided by Article 15 and thus afforded the head of the department the opportunity provided by the contract to correct the claimed abuses of the contracting officer could they be

heard to assert the lack of finality of determinations under Article 15 concerning questions of law. Compare *United States* v. *Beuttas*, 324 U. S. 768, where the contractor who asserted the inapplicability of the Article 15 procedure to questions of law, actually exhausted the remedies provided by Article 15 by appealing to the department head.

CONCLUSION

The decision below is clearly correct. There is no conflict. The controversy turns largely on questions of fact, on which the court below has made findings, adverse to petitioners, that are supported by ample evidence. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

J. HOWARD MCGRATH,
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JULY 1946.

APPENDIX

CONTRACT PROVISIONS

Art. 3. *Changes.*—The contracting officer may at any time, by a written order, and without notice to the sureties, make changes in the drawings and (or) specifications of this contract and within the general scope thereof. If such changes cause an increase or decrease in the amount due under this contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. No change involving an estimated increase or decrease of more than $500 shall be ordered unless approved in writing by the head of the department or his duly authorized representative. Any claim for adjustment under this article must be asserted within 10 days from the date the change is ordered, unless the contracting officer shall for proper cause extend such time, and if the parties cannot agree upon the adjustment the dispute shall be determined as provided in article 15 hereof. But nothing provided in this article shall excuse the contractor from proceeding with the prosecution of the work so changed.

Art. 4. *Changed conditions.*—Should the contractor encounter, or the Government discover during the progress of the work, subsurface and (or) latent conditions at the site materially differing from those shown on the drawings or indicated in the specifications, the attention of the contracting officer shall be called immediately to

such conditions before they are disturbed. The contracting officer shall thereupon promptly investigate the conditions, and if he finds that they materially differ from those shown on the drawings or indicated in the specifications, he shall at once, with the written approval of the head of the department or his representative, make such changes in the drawings and (or) specifications as he may find necessary, and any increase or decrease of cost and (or) difference in time resulting from such changes shall be adjusted as provided in article 3 of this contract.

SPECIFICATIONS

Paragraph 14 of Specifications No. 570 reads as follows:

Protests.—If the contractor considers any work demanded of him to be outside the requirements of the contract, or considers any record or ruling of the contracting officer or of the inspectors to be unfair, he shall immediately upon such work being demanded or such record or ruling being made, ask for written instructions or decision, whereupon he shall proceed without delay to perform the work or to conform to the record or ruling, and, within ten (10) days after the date of receipt of the written instructions or decision, he shall file a written protest with the contracting officer, stating clearly and in detail the basis of his objections. Except for such protests or objections as are made of record in the manner herein specified and within the time limit stated, the records, rulings, instructions, or decisions of the contracting officer shall be final and conclusive. Instructions

and/or decisions of the contracting officer contained in letters transmitting drawings to the contractor shall be considered as written instructions or decisions subject to protest or objection as herein provided.

Paragraph 24 of Specifications No. 570 provided as follows:

Right to change location and plans.—When additional information regarding foundation or other conditions becomes available as a result of the excavation work, further testing, or otherwise, it may be found desirable to change the location, alignment, dimensions, or design of the dam or power plant to meet such conditions. The Government reserves the right to make such reasonable changes as, in the opinion of the contracting officer, may be considered necessary or desirable, and the contractor shall be entitled to no extra compensation because of such changes, except that any increase in the amount of excavation, concrete, or other required work, for which items are provided in the schedule, will be paid for at the unit prices bid therefor in the schedule. The contractor's plant shall be laid out and his operations shall be so conducted as to accommodate any reasonable change in the location and design of the dam and power plant, or any part thereof, without additional cost to the Government.

U. S. GOVERNMENT PRINTING OFFICE: 1948